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OFFICE OF PETITIONS

In re Application of	:	
Harrington et al.	:	DECISION
Application No. 09/760,897	:	DISMISSING PETITION
Filed: January 17, 2001	:	
Attorney Docket No. 0221-0003OC	:	

This is a decision on the renewed petition under 37 CFR 1.53(e), filed June 19, 2002, to accord the above-identified application a filing date of January 17, 2001, with an indication that 166 pages of the application were present on filing.

The petition is **DISMISSED** as moot.

Petitioner requests reconsideration of the previous decision and points to an incorporation by reference statement that is asserted to incorporate the missing pages of specification.

As explained in MPEP 201.06(c):

In a continuation or divisional application, the safeguard (petition and fee under former 37 CFR 1.60(b)) concerning the filing of an application lacking all of the pages of the specification or sheets of drawings of the prior application has not been retained in 37 CFR 1.53(b) since the specification and drawings of a continuation or divisional application are not limited to a reproduction or a "true copy" of the prior application. As a safeguard, however, an applicant may incorporate by reference the prior application by including, in the continuation or divisional application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The incorporation by reference statement can only be relied upon to permit the entering of a portion of the prior application into the continuation or divisional application when the portion of the prior application has been inadvertently omitted from the submitted application papers in the continuation or divisional application. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuation or divisional application to include any subject matter in such prior application(s), **without the need for a petition provided the continuation**

or divisional application is entitled to a filing date notwithstanding the incorporation by reference.

A priority claim under 35 U.S.C. 120 in a continuation or divisional application does not amount to an incorporation by reference of the application(s) to which priority is claimed. For the incorporation by reference to be effective as a proper safeguard against the omission of a portion of a prior application, the incorporation by reference statement must be included in the specification-as-filed, or transmittal letter-as-filed, or in an amendment specifically referred to in an oath or declaration executing the application.

Mere reference to another application, patent, or publication is not an incorporation of anything therein into the application containing such reference for the purpose of the disclosure required by 35 U.S.C. 112, first paragraph. *In re de Seversky*, 474 F.2d 671, 177 USPQ 144 (CCPA 1973). See MPEP § 608.01(p). (emphasis added).

Accordingly, since this application has been accorded a filing date, the issue will not be decided on petition under 37 CFR 1.53(e), but instead the proposed inclusion of the missing pages by way of amendment is properly reviewed by the examiner in charge of this application.

This application is being returned to Technology Center AU 1655.

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-1820.



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